

LAW OFFICES
NELSON MULLINS RILEY & SCARBOROUGH, L.L.P.

A REGISTERED LIMITED LIABILITY PARTNERSHIP

JAMES H. JEFFRIES IV
(704) 417-3103

INTERNET ADDRESS: JJ5@NMRS.COM

BANK OF AMERICA CORPORATE CENTER
SUITE 2400
100 NORTH TRYON STREET

CHARLOTTE, NORTH CAROLINA 28202-4000

TELEPHONE (704) 417-3000

FACSIMILE (704) 377-4814

WWW.NMRS.COM

OTHER OFFICES:

ATLANTA, GEORGIA
CHARLESTON, SOUTH CAROLINA
COLUMBIA, SOUTH CAROLINA
GREENVILLE, SOUTH CAROLINA
MYRTLE BEACH, SOUTH CAROLINA
RALEIGH, NORTH CAROLINA
WINSTON-SALEM, NORTH CAROLINA

September 8, 2003

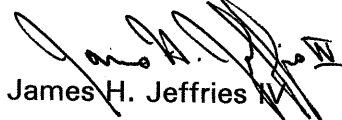
The Honorable Deborah Taylor Tate
Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

Re: Application of Nashville Gas Company, a Division of Piedmont Natural Gas Company, Inc. for an Adjustment of its Rates and Charges, the Approval of Revised Tariffs and the Approval of Revised Service Regulations
Docket No. 03-00313

Dear Chairman Tate:

Enclosed is an original and thirteen copies of Nashville Gas Company's Response to the Consumer Advocate's Motion for a New Scheduling Order, or in the Alternative to Strike and Exclude the Testimony of Ronald A. Johnson, Ronald B. Edelstein, and David J. Dzuricky in the above-captioned matter. Please accept this Response for filing. Copies of this Response are being served by hand-delivery and/or facsimile transmission concurrent with this filing. If you have any questions, you may reach me at the number shown above.

Sincerely,


James H. Jeffries IV

JHJ/srl

Enclosures

c: All Parties of Record
Mr. R. Dale Grimes

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:

**APPLICATION OF NASHVILLE GAS
COMPANY, A DIVISION OF
PIEDMONT NATURAL GAS
COMPANY, INC., FOR AN
ADJUSTMENT OF ITS RATES AND
CHARGES, THE APPROVAL OF
REVISED TARIFFS AND APPROVAL
OF REVISED SERVICE REGULATIONS)**

DOCKET NO. 03-00313

**NASHVILLE GAS COMPANY'S RESPONSE TO CONSUMER ADVOCATE'S
MOTION FOR A NEW SCHEDULING ORDER, OR IN THE ALTERNATIVE
TO STRIKE AND EXCLUDE THE TESTIMONY OF RONALD A. JOHNSON,
RONALD B. EDELSTEIN, AND DAVID J. DZURICKY**

Nashville Gas Company, a division of Piedmont Natural Gas Company, Inc. ("Nashville Gas" or the "Company"), through counsel and pursuant to Rules 1220-1-2-.06 and 1220-1-2-.07 of the Tennessee Regulatory Authority, respectfully submits the following response to the September 5, 2003 *Consumer Advocate's Motion For a New Scheduling Order, or In the Alternative to Strike and Exclude the Testimony of Ronald A. Johnson, Ronald B. Edelstein, and David J. Dzuricky* ("Motion"). In that Motion, the Consumer Advocate asserts that the hearing in this matter should be rescheduled because of Nashville Gas' alleged failure to seasonably update its responses to Consumer Advocate Discovery Request No. 1 by identifying and providing certain generic expert identification information regarding Nashville Gas rebuttal witnesses Ronald A. Johnson, Ronald B. Edelstein, and David J. Dzuricky. Nashville Gas respectfully submits that the Consumer Advocate's Motion is without merit and should be denied for the following reasons:

1. Nashville Gas' obligation to respond to Discovery Request No. 1 was previously waived by express written agreement between the Consumer Advocate and Nashville Gas subject to the right of the Consumer Advocate

to make further request for such information, which request was never made.

2. Neither David J. Dzuricky nor Ronald B. Edelstein are expert witnesses subject to the disclosure requests contained in Discovery Request No. 1.
3. The Consumer Advocate has not been prejudiced by the alleged failure to seasonably update Discovery Request No. 1 but granting its Motion will substantially prejudice Nashville Gas.

Each of these factors distinguishes the pending Motion in this case from the situation presented to Director Jones in The American Water Company case, upon which the Consumer Advocate relies. Each of these factors also provides strong support for the conclusions, discussed in detail below, that the Consumer Advocate's Motion is not well-founded and that its Motion and the relief requested therein should be denied.

BACKGROUND

On April 29, 2003, Nashville Gas filed its application in this docket seeking a general increase in its rates and charges and revisions to its tariffs. On June 26, 2003, the Honorable Pat Miller was designated as the Hearing Officer for this proceeding. On June 17, 2003, a status conference was conducted before the Hearing Officer for the purpose of establishing a procedural schedule in this docket. This procedural schedule provided for two rounds of discovery requests on July 8, 2003 and August 18, 2003, responses to those requests on July 22, 2003 and August 25, 2003, the filing of rebuttal testimony on August 29, 2003, and a hearing on the merits beginning on September 9, 2003.¹

On July 8, 2003, consistent with the procedural schedule established by Director Miller, the Consumer Advocate filed and served on Nashville Gas its Discovery Request to Nashville Gas Company. In that document, as "Discovery Request No. 1", the Consumer

¹ *Order Establishing Procedural Schedule*, Docket No. 03-00313 (Jun 18, 2003).

Advocate requested that Nashville Gas provide eight categories of information regarding experts whom the Company "expects[s] to call as an expert witness at any hearing in this docket." Following receipt of this request, counsel for Nashville Gas contacted counsel for the Consumer Advocate to discuss concerns over the scope of Discovery Request No. 1, which substantially exceeded the scope of permissible discovery for expert witnesses under the Tennessee Rules of Civil Procedure.² Following several telephone conversations, counsel for the Consumer Advocate and counsel for the Company agreed that Nashville Gas would be released from the requirement to respond to Discovery Request No. 1 on the condition that Nashville Gas not ask similar questions in its discovery of the Consumer Advocate. This agreement was subject to the right of either party: (1) to propound data requests regarding specific subsequent testimony filed by experts in the case; or (2) to ask for generic expert discovery utilizing questions that were the same as or substantially similar to Discovery Request No. 1 with respect to additional experts utilized by either party in the case. No part of this agreement contemplated the continuing applicability of Discovery Request No. 1 to additional experts without further notice from the Consumer Advocate.

Following this agreement, counsel for Nashville Gas Company drafted a letter reflecting his understanding of the agreement reached with the Consumer Advocate and forwarded that letter by email to Mr. Shirley for review on July 18, 2003. A copy of this email and the draft letter attached thereto are attached as Exhibit A. Mr. Shirley responded to that email on July 18, 2003 and stated as follows:

² Rule 26.02 of the Tennessee Rules of Civil Procedure permits the discovery through written interrogatories of only the identity of experts expected to be called at trial, the subject matter upon which they are expected to testify, the substance of the facts and opinions to which the expert is expected to testify, and a summary of the grounds for each opinion. Discovery Request No. 1 is substantially broader than permitted under Rule 26.02

Jim, thanks for your email concerning items 1-7 of our discovery request. We have reviewed your attached letter, and we agree that it fairly reflects our agreement to streamline these items of discovery.

A copy of Mr. Shirley's July 18, 2003 email is attached hereto as Exhibit B. On July 21, 2003, counsel for Nashville Gas Company signed and transmitted the letter agreement to Mr. Shirley via facsimile transmission. A copy of this letter, and a facsimile confirmation showing receipt by the Consumer Advocate's office is attached hereto as Exhibit C.³ The text of this letter is as follows:

Dear Joe:

This letter will confirm our recent conversation regarding questions 1 through 7 of the Consumer Advocate Division's first Data Requests to Nashville Gas Company in the above-captioned proceeding.

In our conversation, we agreed that Nashville is not required to respond to these questions at this time based on the CAD's degree of familiarity with Piedmont's sole outside expert witness, Dr. Donald Murray. Nashville agrees that it will not ask the same or substantially similar questions regarding any witness filing testimony on behalf of the CAD to the extent such witness is a member of the CAD staff.

This agreement shall not affect the ability of either party to propound data requests regarding the basis of any specific testimony presented by witnesses for the opposing party, nor shall it in any way impede the respective parties' rights to ask questions identical or substantially similar to CAD questions 1 through 7 with respect to additional expert witnesses utilized by either party other than Dr. Murray or members of the CAD Staff.

If you do not agree with my recitation of the terms of our agreement, please contact me immediately.

No contact was made by Mr. Shirley with Nashville Gas' counsel following receipt of this confirmatory agreement. In reliance on this agreement, Nashville Gas did not object to the CAD's Discovery Request No. 1 and made the following response to that data request in Nashville Gas' discovery responses filed on July 22, 2003:

and, therefore, is objectionable on those grounds.

³ The Consumer Advocate makes reference to this agreement in its Motion but does

Pursuant to the agreement reached between the Consumer Advocate Division and Nashville Gas Company, Nashville Gas is not answering (and is not required to answer) this data request at this time.

The Consumer Advocate did not challenge or otherwise respond to this answer in any way.

The procedural schedule in this docket was subsequently modified at the request of Nashville Gas (without objection from the Consumer Advocate) for the purpose of permitting time for the Company and the Consumer Advocate to conduct settlement discussions in this docket. Under this revised schedule, the date for prefilled rebuttal testimony was moved to September 3, 2003 but the hearing date remained scheduled for September 9, 2003.

Nashville Gas filed and served its rebuttal testimony on September 3, 2003. This testimony included testimony from Ronald B. Edelstein, David J. Dzuricky and Ronald A. Johnson, witnesses who had not previously testified in this proceeding. Mr. Edelstein is an employee of GTI and filed rebuttal testimony addressing the Consumer Advocate's recommendation to deny the Company the ability to recover funding for GTI. Mr. Dzuricky is Nashville Gas' Senior Vice President and Chief Financial Officer and filed rebuttal testimony addressing Dr. Brown's proposed hypothetical capital structure and the probable impact of Dr. Brown's return and capital structure recommendations on the Company. Mr. Johnson is a Vice President of Merrill Lynch and filed rebuttal testimony addressing the manner in which the securities markets and ratings agencies would view a capital structure and return on equity in the range proposed by Dr. Brown and what effect that would have on the Company's ability to raise equity capital.

not explain the significance of the agreement and has not provided a copy to the Authority.

On September 5, 2003, without requesting any information about any of these witnesses or even making contact with Nashville Gas, the Consumer Advocate filed its pending motion.

DISCUSSION

I. THE CONSUMER ADVOCATE'S MOTION SHOULD BE DENIED BECAUSE IT IS CONTRARY TO THE EXPRESS AGREEMENT REACHED WITH NASHVILLE GAS REGARDING THE PROCESS FOR PURSUING DISCOVERY OF EXPERTS IN THIS CASE.

The most fundamental reason the Hearing Officer should deny the relief requested by the Consumer Advocate in this case is because that relief is directly contrary to the express agreement entered into between the Consumer Advocate and Nashville Gas Company regarding Discovery Request No. 1 and similar discovery that might be pursued by the Company. That agreement was initially reached verbally in a telephone conversation between counsel for the Consumer Advocate and the Company. It was then reduced to a written draft, reviewed and unequivocally approved by the Consumer Advocate on July 18, 2003. Finally, it was transmitted in final form back to the Consumer Advocate by Nashville Gas' counsel on July 21, 2003. These facts are plainly established in the prior section of this response and are confirmed by the exhibits attached hereto. They equally plainly establish the sequence of discussion between the Consumer Advocate and Nashville Gas and the ultimate agreement of the Consumer Advocate with the terms reflected on Exhibit C. These terms: (1) waive Nashville Gas' obligation to answer Discovery Request No. 1 in exchange for an agreement by Nashville Gas not to ask similar discovery of the Consumer Advocate; (2) preserve the rights of the parties to ask specific questions about testimony filed by experts for the opposing party; and (3) preserve the rights of both parties "to ask questions identical or substantially similar to CAD questions 1-7 with respect to additional expert witnesses utilized by either party other than Dr. Murray or members of the CAD Staff." (Emphasis added). This well-documented

agreement between the Consumer Advocate and Nashville Gas precludes the relief sought by the Consumer Advocate for a number of reasons.

First, it is simply not reasonably possible to construe this agreement as consistent with an open-ended obligation by Nashville Gas to seasonably "update" its responses to Discovery Request No. 1 as the Consumer Advocate contends. The agreement is obviously meant to address the parties' obligations under Discovery Request No. 1 (or similar requests issued by Nashville Gas) and it, in fact, does address those obligations in unambiguous terms. In doing so, the conclusion that Nashville Gas was relieved of its obligation to answer Discovery Request No. 1 is inescapable.⁴

If that was all the agreement said, then Nashville Gas would concede that the Consumer Advocate had at least a good faith basis for its current Motion. That is not all the agreement says, however. The agreement goes on to describe the parties' remaining rights with respect to expert discovery. Those rights are twofold: (1) "to propound data requests regarding the basis of any specific testimony presented by witnesses for the opposing party", and (2) "to ask questions identical or substantially similar to CAD questions 1 through 7 with respect to additional expert witnesses utilized by either party other than Dr. Murray or members of the CAD Staff." Plainly, under the agreement, the obligation of either party to provide further discovery of experts was contingent upon being asked – either through data requests propounded by the opposing party or by being asked questions by the opposing party. Just as plainly, the data requests and questions referenced in the agreement were intended to be potential future requests and not intended to include the already issued Discovery Request No. 1.⁵ In short, the plain language of the

⁴ The exact quote is "We agreed that Nashville is not required to respond to these questions at this time . . ."

⁵ The verb tenses used in both clauses are consistent with future requests/questions but inconsistent with reference to an existing request such as Discovery Request No. 1. Further, while the agreement between the Consumer Advocate and Nashville Gas clearly preserved the parties' rights to make further "generic" discovery of experts, it just as clearly anticipated that such discovery would take place through some form of additional questions directed to the opposing party rather than through an undefined residual

agreement contradicts the very basis for the Consumer Advocate's Motion – the assertion that Nashville Gas had a duty to seasonably update its responses to Discovery Request No. 1.

Second, if an open-ended and unstated obligation to update Discovery Request No. 1 were intended to survive the agreement, then the provisions regarding further discovery of additional experts which are contained in the agreement do not make sense. In other words, if Nashville Gas had a continuing duty to update its "responses" to Discovery Request No. 1 for additional experts, then the express provision preserving the Consumer Advocates right to "ask questions identical or substantially similar to CAD questions 1-7 with respect to additional expert witnesses utilized by [Nashville]" would be duplicative and meaningless. In short, the notion of a continuing duty to "update" Discovery Request No. 1 in this case cannot be reconciled with the express terms and provisions of the written agreement between the CAD and the Company regarding discovery of additional experts. Further, the notion of "updating" Nashville Gas' response to Discovery Request No. 1 is problematic in this case because Nashville Gas never answered Discovery Request No. 1 in the first place. Instead, it provided a response that said it was not answering (and was not required to answer) that request at that time.⁶

Third, if the Consumer Advocate or Nashville Gas believed that Nashville Gas had an open-ended obligation following the agreement to seasonably update its response to Discovery Request No. 1 in the event additional experts were utilized, reference to such an obligation would have been natural and prudent in the agreement given that the parties were clearly defining their respective rights with regard to future expert discovery in that agreement. Nonetheless, reference to a remaining obligation to respond to Data Request No. 1 for additional experts is completely absent from the agreement. Similarly, if the

obligation to respond to Discovery Request No. 1.

⁶ The Consumer Advocate did not object to this response or move to compel Nashville Gas to answer Discovery Request No. 1.

Consumer Advocate believed that such a duty persisted, it would have been natural and prudent to note the absence of a reference to such a duty in the agreement either before or after it was issued. Notwithstanding the fact that Mr. Shirley negotiated the agreement over the telephone, reviewed the agreement in draft form and presumably reviewed its final form, he at no time expressed concern to counsel for Nashville Gas regarding the lack of reference in the agreement to a continuing duty to answer Discovery Request No. 1 with respect to additional experts. Nor did he otherwise assert that Discovery Request No. 1 was still effective for additional experts. In fact, the only contact Mr. Shirley made with counsel for Nashville Gas relative to the contents of the agreement after it was reduced to writing was the following statement in his July 18, 2003 email:

Jim, thanks for your email concerning items 1-7 of our discovery request. We have reviewed your attached letter, and we agree that it fairly reflects our agreement to streamline these items of discovery. (emphasis added)

In light of this statement, and the context in which it was made, the conclusion that an additional unstated and unreferenced obligation regarding expert discovery continued to apply to Nashville Gas is simply not plausible.

Finally, the Consumer Advocate's Motion should be denied because it would deprive Nashville Gas of the benefit of the arms-length bargain it reached with the Consumer Advocate regarding Discovery Request No. 1. In exchange for the waiver of Nashville Gas' obligation to answer this discovery request (but subject to the right of the Consumer Advocate to renew the request through additional questions in the future), Nashville Gas agreed not to ask the Consumer Advocate similar questions of its witnesses and also gave up its right to object to Discovery Request No. 1. It would be fundamentally unfair and inequitable to deprive Nashville Gas of the benefit of its agreement while the Consumer Advocate is permitted to retain the benefits it received. This is exactly the result that would pertain if the Consumer Advocate's motion is granted.

Based on the foregoing, Nashville Gas submits that it had no duty to seasonably update its response to Consumer Advocate Discovery Request No. 1 with respect to rebuttal witnesses Ronald A. Johnson, Ronald B. Edelstein, and David J. Dzuricky because any such duty was superceded by the terms of the agreement regarding expert discovery set forth in the July 21, 2003 letter from counsel for Nashville Gas to counsel for the Consumer Advocate. Nashville Gas acknowledges that under that agreement the Consumer Advocate has the right to "ask questions identical or substantially similar to" Discovery Request No. 1 regarding these witnesses but, to date, the Consumer Advocate has not done so. On the basis of this superceding agreement with the Consumer Advocate, Nashville Gas contends that the Consumer Advocate's Motion should be denied.

II. THE CONSUMER ADVOCATE'S MOTION SHOULD BE DENIED BECAUSE NEITHER MR. DZURICKY NOR MR. EDELSTEIN ARE EXPERTS SUBJECT TO THE REACH OF DISCOVERY REQUEST NO. 1.

Even if the Hearing Officer determines that Nashville Gas was under an obligation to update its prior "response" to Discovery Request No. 1, which would be contrary to the agreement discussed above, two of the three witnesses referenced in the Consumer Advocate's Motion are not experts and, therefore, do not even fall within the scope of Discovery Request No. 1.

In general, questions regarding the admissibility, qualifications, relevancy and competency of expert testimony are left to the discretion of the trial court. . . . The specific rules of evidence that govern the issue of admissibility of scientific proof in Tennessee are Tenn. R. Evid. 702 and 703.

McDaniel v. CSX Transportation, Inc., 955 S.W. 2d 257, 263-64 (S. Ct. 1997) (citations omitted). Under Tennessee Rules of Evidence 702 and 703, expert testimony is considered to be that relating to "scientific, technical or other specialized knowledge" and is based upon facts "perceived by or made known to the expert at or before hearing." Tenn. R. Evid. 702 & 703. In simpler terms, expert testimony is opinion testimony offered to assist the trier of fact in understanding a technically or scientifically complex subject.

Expert testimony is typically not based on the first hand experience of the underlying facts of the case and experts are typically specially retained for their expertise for the purpose of assisting with the trial of the disputed matter.

In this case, Mr. Edelstein and Mr. Dzuricky do not readily fit this mold. Mr. Edelstein is an employee of GTI and his testimony is devoted to a description of the activities and purposes of GTI and an explanation of the rationale for supporting GTI funding. He has first-hand knowledge of the matters about which he testifies and his testimony is based on that knowledge. He was not specially retained for purposes of this litigation and he is not engaged in an effort to assist the Authority understand highly technical or scientific matters.

Mr. Dzuricky's situation is similar. He is the Chief Financial Officer of Piedmont Natural Gas Company and, as such, his primary duties include responsibility for maintaining and monitoring the capital structure and financial integrity of the Company. In this capacity, Mr. Dzuricky reviewed the recommendations of Dr. Brown regarding capital structure and rate of return. He then investigated the reasonableness of both Dr. Brown's capital structure and rate of return recommendations. He did not do this through sophisticated economic analysis of Dr. Brown's DCF and CAPM testimony, or through the creation of an independent comparable company analysis, or because he was retained by Piedmont for that purpose. Instead, he applied what he himself knew of Piedmont's historical capital structure and return performance and the required conditions necessary to maintain the Company's financial integrity. His understanding of those requirements was not based on esoteric knowledge gained through independent study in the field of capital financing but was based on his discrete and primary responsibility for Piedmont's financial integrity. He further examined what results had been allowed other LDC's in recent rate cases to test the reasonableness of Dr. Brown's recommendations and compared what Dr. Brown recommended in this case to those other company results for the purpose of determining what the likely result to Piedmont's financial integrity would be if Dr. Brown's

recommendations were adopted by the TRA. And while Mr. Dzuricky might reasonably be said to be an expert on Piedmont's capital structure and financial integrity, that expertise is born of experience and day-to-day responsibility, not the specialized skill, training or education of the sort that typically qualifies an expert. Obviously, Mr. Dzuricky was not retained for purposes of this case and would not be testifying in this case at all were it not for his position with the Company. Each of these attributes clearly distinguishes him from the typical expert witness.

As has been illustrated above, neither Mr. Edelstein nor Mr. Dzuricky are expert witnesses of the type anticipated by the Tennessee Rules of Evidence or the Tennessee Rules of Civil procedure. Instead, they are employees of the firms about which they are testifying and their primary day-to-day responsibilities involve the very same matters they are specifically testifying about. They are not in the role of assisting the Authority understand highly technical or scientific matters based on their independent expertise in the fields of R&D funding generally or corporate financial analysis and they cannot and should not be construed as "experts" subject to the Consumer Advocate's Discovery Request No. 1. As such, that discovery request has no application to these witnesses and Nashville Gas has no duty under any set of facts to seasonably supplement its response to that request in order to identify these witnesses.

III. THE CONSUMER ADVOCATE'S MOTION SHOULD BE DENIED BECAUSE THE CONSUMER ADVOCATE HAS SUFFERED NO PREJUDICE BUT GRANTING THE MOTION WOULD WORK SUBSTANTIAL PREJUDICE ON NASHVILLE GAS COMPANY.

Under the facts of this case, the Consumer Advocate has suffered no prejudice as a result of the purported failure of Nashville Gas to seasonably update its prior "response" to Discovery Request No. 1. Further, granting the relief sought by the Consumer Advocate would work substantial prejudice on Piedmont.

The primary reason that the Consumer Advocate is not prejudiced by Nashville Gas' alleged failure to update Discovery Request No. 1 is that the Consumer Advocate

consented to and approved the expert discovery procedures set forth in the July 21, 2003 agreement amongst the parties. Under those procedures, the Consumer Advocate could have resurrected or restated its Discovery Request No. 1 at any time after entry into the agreement but to date it has not done so. Having voluntarily entered into the agreement and then voluntarily failed to follow the procedures specified therein to obtain discovery "identical or substantially similar to" Discovery Request No. 1 regarding additional experts utilized by Nashville Gas, the Consumer Advocate cannot reasonably assert that it has been harmed by anything Nashville Gas has done or failed to do. As such, any prejudice it may feel with respect to expert discovery in this docket is the proximate result of its own actions and does not constitute legal prejudice sufficient to justify the relief sought.

The second reason supporting the conclusion that the Consumer Advocate has suffered no prejudice in this instance arises from the fact that the Consumer Advocate and Nashville Gas are in exactly the same position with respect to generic expert discovery of the sort sought by Discovery Request No. 1. Pursuant to the July 21, 2003 agreement, neither party has taken such discovery in this case although both had the right to do so. As such, it is difficult to understand how the Consumer Advocate can be prejudiced when, as the result of its own express agreement and its failure to pursue the rights afforded by that agreement, it finds itself in the same position as Nashville Gas with respect to this type of discovery.

Finally, Tennessee law only provides for the discovery of limited information regarding experts expected to be called at trial under Rule 26.02 of the Tennessee Rules of Civil Procedure.

(4) Trial Preparation: Experts. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision (1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(A)(i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert

witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

(ii) A party may also depose any other party's expert witness expected to testify at trial.

Tenn. R. Civ. Pro. 26.02 (emphasis added). Under this provision of Tennessee law, written discovery of experts is limited to identity, subject matter, facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. In this case, the limited information discoverable of experts under Rule 26.02 was provided in the rebuttal testimony of each of Nashville Gas' witnesses. As such, and assuming that Messrs. Dzuricky, Edelstein and Johnson are each "experts" subject to Discovery Request No. 1, the Consumer Advocate has already received and is in possession of the information to which it is entitled under Tennessee law. In fact, it was in possession of this information before it filed its Motion. If this is the case, then there is no prejudice to the Consumer Advocate in not having more information.

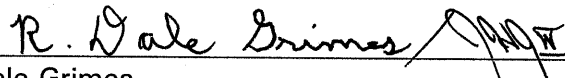
In contrast to the situation of the Consumer Advocate, Nashville Gas will be materially prejudiced if the relief sought by the Consumer Advocate is granted. This prejudice will result from the fact that Piedmont Natural Gas Company, Inc. is scheduled to close a \$425 million acquisition and a concurrent financing transaction on September 30, 2003 through which it will acquire and finance the purchase of North Carolina Natural Gas Corporation, another North Carolina natural gas local distribution company. The pre-closing meeting for this transaction is currently scheduled for September 16, 2003. This acquisition and financing is the largest in Piedmont's history and will completely occupy the time and attention of both Piedmont's legal counsel and its officers and management employees, all of whom are integrally involved in this rate case, starting on or about the 15th of this month. Under the Consumer Advocate's proposal, the hearing of this matter will be rescheduled until September 30, 2003. It will simply be impossible for Piedmont to

try a rate case and close these transactions at the same time and forcing it to do so will cause material harm to one or both of these important transactions.⁷

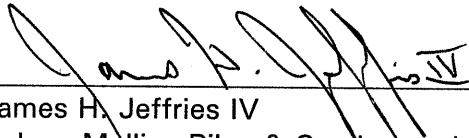
CONCLUSION

For the reasons set forth above, Nashville Gas respectfully submits that the *Consumer Advocate's Motion for a New Scheduling Order, or in the Alternative to Strike and Exclude the Testimony of Ronald A. Johnson, Ronald B. Edelstein and David J. Dzuricky* should be denied and this case should proceed as scheduled.

This the 8th day of September, 2003.



R. Dale Grimes
Bass, Berry & Sims, PLC
315 Deaderick Street, Suite 2700
Nashville, Tennessee 37238-3001
Telephone: 615-742-6244



James H. Jeffries IV
Nelson Mullins Riley & Scarborough, L.L.P.
Bank of America Corporate Center, Suite 2400
100 North Tryon Street
Charlotte, North Carolina 28202-4000
Telephone: 704-417-3000

ATTORNEYS FOR NASHVILLE GAS COMPANY

⁷ With respect to the Consumer Advocate's alternative request for relief, Nashville Gas does not believe that the facts of this case provide any rational basis for striking any part of its rebuttal testimony. As is readily apparent from the discussion set forth above, this case bears no resemblance to The American Water Company case in which Director Jones struck an expert's rebuttal testimony because the applicant failed to update a discovery request aimed at discovering expert information. Further, striking the rebuttal testimony of Company witnesses Edelstein, Johnson and Dzuricky would be substantially harmful to Nashville Gas' case because each provide direct, and unduplicated, response to important matters contained in the testimony of Consumer Advocate witnesses.

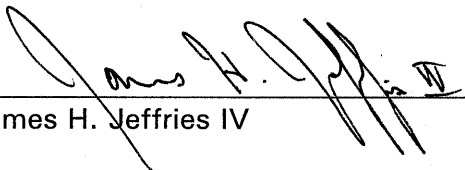
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of NASHVILLE GAS RESPONSE TO THE CONSUMER ADVOCATE'S MOTION FOR A NEW SCHEDULING ORDER, OR IN THE ALTERNATIVE TO STRIKE AND EXCLUDE THE TESTIMONY OF RONALD A. JOHNSON, RONALD B. EDELSTEIN, AND DAVID J. DZURICKY was served upon the parties in this action by facsimile transmission and/or hand-delivery addressed as follows:

Joe Shirley
Assistant Attorney General
Office of the Consumer Advocate and Protection Division
Post Office Box 20207
Nashville, Tennessee 37202

George H. Godwin, Jr.
Executive Director
Associated Valley Industries, Inc.
1204 Cleo Avenue, SE
Decatur, Alabama 35601

This the 8th day of September, 2003.



James H. Jeffries IV

EXHIBIT A

Jim Jeffries

From: Jim Jeffries
Sent: Friday, July 18, 2003 12:13 PM
To: Joe Shirley (Joe.Shirley@state.tn.us)
Subject: Draft "settlement" letter on Questions 1-7

Joe:

I have attached a draft settlement letter on the CAD's questions 1-7. Please let me know if you have any comments or questions. Once I have your feedback, I will finalize the letter and transmit. Thanks for your assistance on this one.

Jim



Shirley ltr.doc (55 KB)

James H. Jeffries IV
Nelson Mullins Riley & Scarborough L.L.P.
Bank of America Corporate Center, Suite 2400
100 North Tryon Street
Charlotte, North Carolina 28202-4000
Office: (704) 417-3103
Facsimile: (704) 417-3014
Cell: (336) 681-2800
Email: jj5@nmrs.com

Confidentiality Notice: This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately either by phone (800-237-2000) or reply to this e-mail and delete all copies of this message.

LAW OFFICES
NELSON MULLINS RILEY & SCARBOROUGH, L.L.P.

A REGISTERED LIMITED LIABILITY PARTNERSHIP

JAMES H. JEFFRIES IV
(704) 417-3103

INTERNET ADDRESS: JJ5@NMRS.COM

BANK OF AMERICA CORPORATE CENTER
SUITE 2400
100 NORTH TRYON STREET
CHARLOTTE, NORTH CAROLINA 28202-4000
TELEPHONE (704) 417-3000
FACSIMILE (704) 377-4814
WWW.NMRS.COM

OTHER OFFICES:
ATLANTA, GEORGIA
CHARLESTON, SOUTH CAROLINA
COLUMBIA, SOUTH CAROLINA
GREENVILLE, SOUTH CAROLINA
MYRTLE BEACH, SOUTH CAROLINA
RALEIGH, NORTH CAROLINA
WINSTON-SALEM, NORTH CAROLINA

July 17, 2003

Mr. Joe Shirley
Assistant Attorney General
Office of the Attorney General
Consumer Advocate and Protection Division
P.O. Box 20207
Nashville, Tennessee 37202

Re: Application of Nashville Gas Company, a Division of Piedmont Natural Gas Company, Inc. for an Adjustment of its Rates and Charges, the Approval of Revised Tariffs and the Approval of Revised Service Regulations
Docket No. 03-00313

Dear Joe:

This letter will confirm our conversation yesterday regarding questions 1 through 7 of the Consumer Advocate Division's first Data Requests to Nashville Gas Company in the above-captioned proceeding.

In our conversation, we agreed that Nashville is not required to respond to these questions at this time based on the CAD's degree of familiarity with Piedmont's sole outside expert witness, Dr. Donald Murray. Nashville agrees that it will not ask the same or substantially similar questions regarding any witness filing testimony on behalf of the CAD to the extent such witness is a member of the CAD staff.

This agreement shall not affect the ability of either party to propound data requests regarding the basis of any specific testimony presented by witnesses for the opposing party, nor shall it in any way impede the respective parties' rights to ask questions identical or substantially similar to CAD questions 1 through 7 with respect to additional expert witnesses utilized by either party other than Dr. Murray or members of the CAD Staff.

If you do not agree with my recitation of the terms of our agreement, please contact me immediately.

Sincerely,

Mr. Joe Shirley

Error! No text of specified style in document.Page 2

James H. Jeffries IV

JHJ/srl

EXHIBIT B

Jim Jeffries

From: Joe Shirley [Joe.Shirley@state.tn.us]
Sent: Friday, July 18, 2003 4:08 PM
To: Jim Jeffries
Subject: Re: Draft "settlement" letter on Questions 1-7

Jim, thanks for your email concerning items 1-7 of our discovery request. We have reviewed your attached letter, and we agree that it fairly reflects our agreement to streamline these items of discovery.

With regard to our discussion concerning request no. 42, we are interested in reviewing documents that discuss events or transactions that the company has taken or plans to take which could significantly affect Nashville's cost of service. For example, we have noted sizeable increases in the payrolls and benefits directly assigned to Nashville as well as the amounts allocated to Nashville. We therefore want to examine all documents that discuss the underlying reasons for these increases, such as (but not confined to) negotiation of contracts or arrangements involving salaries and wages, long-term incentive pay, bonus plans, and insurance, pension and other benefits costs. Additionally, we want to examine all documents that discuss any course of action taken or planned to: change the methods or activity bases for allocating common costs (including but not confined to Piedmont's proposed acquisition of NCNG); restructure management or reduce the company's workforce; outsource services that are currently performed in-house; negotiate contracts for goods or services with new or existing vendors; re-finance any existing debt instruments or enter into any new debt covenants; issue or re-acquire any securities; etc. Finally, we are interested in any plans to either implement new systems or upgrade existing ones that control any of the company's major transaction cycles, such as customer billing, meter reading, maintenance of inventories, work order processing, human resources management, accounting and finance, etc.

While this list is not intended to be all inclusive, we hope that it will provide Nashville with some insight into our expectations for request no. 42. Please do not hesitate to contact us with any additional questions or concerns.

Thanks, Joe

Joe R. Shirley, Assistant Attorney General
Office of the Tennessee Attorney General
Box 20207 - Nashville, TN 37202-0207
Voice: 615.532.2590 - Fax: 615.532.2910
Joe.Shirley@state.tn.us

The information contained in this message is intended only for the use of the individual or entity named above. If the reader is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone at 615.741.1671 and permanently delete the message from your system. Receipt by anyone other than the intended recipient is not a waiver of any investigation, joint prosecution or attorney-client privilege, work product immunity, or any other privilege or immunity.

>>> "Jim Jeffries" <JJ5@NMRS.com> 07/18/03 11:13AM >>>
Joe:

I have attached a draft settlement letter on the CAD's questions 1-7. Please let me know if you have any comments or questions. Once I have your feedback, I will finalize the letter and transmit. Thanks for your assistance on this one.

Jim

<<Shirley ltr.doc>>

James H. Jeffries IV
Nelson Mullins Riley & Scarborough L.L.P.

Bank of America Corporate Center, Suite 2400
100 North Tryon Street
Charlotte, North Carolina 28202-4000
Office: (704) 417-3103
Facsimile: (704) 417-3014
Cell: (336) 681-2800
Email: jj5@nmrs.com

Confidentiality Notice: This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately either by phone (800-237-2000) or reply to this e-mail and delete all copies of this message.

EXHIBIT C

LAW OFFICES
NELSON MULLINS RILEY & SCARBOROUGH, L.L.P.

A REGISTERED LIMITED LIABILITY PARTNERSHIP

JAMES H. JEFFRIES IV
(704) 417-3103

INTERNET ADDRESS: JJ5@NMRS.COM

BANK OF AMERICA CORPORATE CENTER
SUITE 2400

100 NORTH TRYON STREET
CHARLOTTE, NORTH CAROLINA 28202-4000
TELEPHONE (704) 417-3000
FACSIMILE (704) 377-4814
WWW.NMRS.COM

OTHER OFFICES:
ATLANTA, GEORGIA

CHARLESTON, SOUTH CAROLINA
COLUMBIA, SOUTH CAROLINA
GREENVILLE, SOUTH CAROLINA
MYRTLE BEACH, SOUTH CAROLINA
RALEIGH, NORTH CAROLINA
WINSTON-SALEM, NORTH CAROLINA

July 21, 2003

Mr. Joe Shirley
Assistant Attorney General
Office of the Attorney General
Consumer Advocate and Protection Division
P.O. Box 20207
Nashville, Tennessee 37202

Re: Application of Nashville Gas Company, a Division of Piedmont Natural Gas Company, Inc. for an Adjustment of its Rates and Charges, the Approval of Revised Tariffs and the Approval of Revised Service Regulations
Docket No. 03-00313

Dear Joe:

This letter will confirm our recent conversation regarding questions 1 through 7 of the Consumer Advocate Division's first Data Requests to Nashville Gas Company in the above-captioned proceeding.

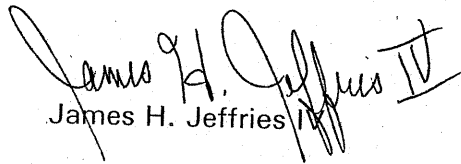
In our conversation, we agreed that Nashville is not required to respond to these questions at this time based on the CAD's degree of familiarity with Piedmont's sole outside expert witness, Dr. Donald Murray. Nashville agrees that it will not ask the same or substantially similar questions regarding any witness filing testimony on behalf of the CAD to the extent such witness is a member of the CAD staff.

This agreement shall not affect the ability of either party to propound data requests regarding the basis of any specific testimony presented by witnesses for the opposing party, nor shall it in any way impede the respective parties' rights to ask questions identical or substantially similar to CAD questions 1 through 7 with respect to additional expert witnesses utilized by either party other than Dr. Murray or members of the CAD Staff.

Mr. Joe Shirley
July 21, 2003
Page 2

If you do not agree with my recitation of the terms of our agreement, please contact me immediately.

Sincerely,


James H. Jeffries IV

JHJ/srl

Transmission Report

Date/Time
Local ID
Local Name
Company Logo

7-21-03; 3:06PM
7044173014
Nelson Mullins

This document was confirmed.
(reduced sample and details below)
Document Size Letter-S

LAW OFFICES
NELSON MULLINS RILEY & SCARBOROUGH, L.L.P.
A REGISTERED LIMITED LIABILITY PARTNERSHIP
BANK OF AMERICA CORPORATE CENTER
SUITE 2400
100 NORTH TRYON STREET
CHARLOTTE, NORTH CAROLINA 28202-4000
TELEPHONE (704) 417-3000
FACSIMILE (704) 377-4814
WWW.NMR.COM

Facsimile Cover Sheet

TO: Joe Shirley FAX No. 615-532-2910
COMPANY: Consumer Advocate - TN CITY: Nashville
PHONE No. (615) 741-1671
FROM: James H. Jeffries IV DID No. (704) 417-3103
RETURN TO: Becky Olsen FILE No. 02615/09015
DATE/TIME: July 21, 2003 at 4:05 PM PAGES: 3 including cover sheet
COMMENTS:

CONFIDENTIALITY NOTICE: The information contained in this facsimile message may be attorney privileged and confidential information and is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone, and return the original message to us at the above address via the U.S. Postal Service. Thank you.

IF YOU DID NOT RECEIVE ALL PAGES, PLEASE CALL BACK AS SOON AS POSSIBLE

FAX Page 1



Total Pages Scanned : 3 Total Pages Confirmed : 3

No.	Doc	Remote Station	Start Time	Duration	Pages	Mode	Comments	Results
1	139	#1026150901581615532	7-21-03; 3:04PM	1'12"	3/ 3	G3		CP 14.4

Notes :

C: Error Correct
C: Broadcast Send
D: Completed
S: Host Scan
E: Host Fax

RE: Resend
MP: Multi-Poll
RM: Receive to Memory
HP: Host Print
HR: Host Receive

PD: Polled by Remote
PG: Polling a Remote
DR: Document Removed
FO: Forced Output
FM: Forward Mailbox Doc.

MB: Receive to Mailbox
PI: Power Interruption
TM: Terminated by user
WT: Waiting Transfer
WS: Waiting Send